

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

MICHALE C. ALBERTY, JACQUELINE)
ALBERTY, JOHN M. ALBERTY, a)
minor child, ANASTASIA M. ALBERTY,)
a minor child, and GABRIELLE M.)
ALBERTY, a minor child,)

Plaintiffs,)

v.)

NATIONWIDE MUTUAL)
INSURANCE COMPANY,)

Defendant.)

Civil Action No. 05-1319
Judge Joy Flowers Conti
Magistrate Judge Lisa Pupo Lenihan

ORDER

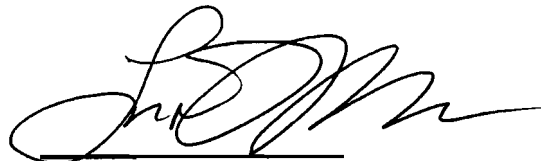
This case involves claims related to Defendant's conduct in respect of an automobile policy insuring Plaintiffs at the time of a motor vehicle accident in August, 2003. The Complaint was originally filed in the Court of Common Pleas of Washington County and removed to this court in September 2005. Shortly thereafter, Defendant filed a Motion to Dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.

The proceedings were stayed due to the filing of a motion to remand by Plaintiffs, which was denied by the Court on November 30, 2005. Plaintiffs were at that time granted twenty days to file a response to the pending Motion to Dismiss. Plaintiffs had been proceeding pro se but hired counsel, who filed, on January 9, 2006, an Amended Complaint and incorporated same as their response to the Motion to Dismiss.

Based upon the filing of the Amended Complaint, which addresses at least some of the issues raised in the Motion to Dismiss, the Court ORDERS that the Motion to Dismiss filed on September 26, 2005 (Doc. No. 2) is DENIED;

The Court FURTHER ORDERS that Defendants are granted 20 days from the date of this Order, or until January 30, 2006, to file either a responsive pleading to Plaintiff's Amended Complaint or a second Motion to Dismiss.

In accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1)(A), and Rule 72.1.3 of the Local Rules for Magistrates, the parties are allowed ten (10) days from the date of service to file an appeal from this Order to the District Court. Any opposing party shall have seven (7) days from the date of service of the appeal to respond thereto. Failure to timely file an appeal may constitute a waiver of any appellate rights.

A handwritten signature in black ink, appearing to read 'Lisa Pupo Lenihan', written over a horizontal line.

LISA PUPO LENIHAN
United States Magistrate Judge

Dated: January 9, 2006

cc: All counsel